



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201425023

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 25 2014

Uniform Issue List: 408.03-00

T:EP:RA:TJ

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XXXXXXXXXXXXX
XXXXXXXXXXXXX

Legend:

Taxpayer A	=	XXXXXXXXXX
Decedent B	=	XXXXXXXXXX
Trust C	=	XXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Individual D	=	XXXXXXX
Individual E	=	XXXXXXX
IRA X	=	XXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXX
IRA Y	=	XXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
IRA Z	=	XXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount 1	=	XXXXXXX
Amount 2	=	XXXXXXX

Date 1 = XXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXX
Date 3 = XXXXXXXXXXXXXXXX
Date 4 = XXXXXXXXXXXXXXXX

Dear XXXXXX:

This is in response to your request dated April 11, 2013, as supplemented by correspondence dated January 3, 2014, from your authorized representatives, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Prior to his death, Decedent B maintained IRA X. After Decedent B's death, the proceeds of IRA X, Amount 1, were distributed to its beneficiary, Trust C. More than 60 days after the distribution from IRA X, Trust C made a distribution of Amount 2 to Taxpayer A, Decedent B's surviving spouse. Taxpayer A, on the assumption that she could roll over a distribution from Trust C to her own IRA, asks for a waiver asserting that her failure to deposit the distribution from Trust C in her own IRA within the 60-day period prescribed by section 408(d)(3) of the Code was due to financial institution error. Taxpayer A asserts financial institution error is established by: a) the Trust C trustees' and the trustees' attorney's improper actions regarding timing of the distribution of IRA X; and b) the trustees' attorney's failure to timely inform the trustees and custodian of Trust C of the assumed rollover options for Taxpayer A, a surviving spouse. Taxpayer A represents that, except for the transfers described in this ruling, she has not used Amount 2 for any purpose.

Taxpayer A represents that Decedent B established Trust C on Date 1, and last amended it on Date 2, and that the children of Decedent B, Individuals D and E, were trustees of Trust C. Taxpayer A represents that Trust C was the beneficiary of IRA X when Decedent B died on Date 3, and that on Date 4, the proceeds from IRA X, Amount 1, were distributed and deposited in Trust C's checking account.

Under the terms of Trust C, it was to distribute 25% of the value of IRA X to Taxpayer A. On September 29, 2009, Taxpayer A and Individuals D and E, in their individual and trustee capacities, entered into a settlement agreement with respect to the interpretation and administration of Trust C. The settlement

agreement provided, in part, that Trust C would attempt to establish a rollover IRA in Taxpayer A's name for Taxpayer A's portion of the IRA X proceeds.

Taxpayer A established IRA Y, and later, IRA Z, on the assumption that she would be able to roll over Amount 2 from Trust C. On October 14, 2009, Amount 2, Taxpayer A's portion of the proceeds of IRA X, was distributed from Trust C and deposited directly into IRA Y and on October 22, 2009, the balance of IRA Y was transferred into IRA Z. On March 5, 2010, Taxpayer A received a Schedule K-1 from Trust C indicating that Amount 1 was taxable.

Taxpayer A claims that the Trust C trustees and trustees' attorney had duties under applicable state law to Taxpayer A, as Trust C beneficiary, and that they failed to fulfill these duties.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 2 from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other

amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) of the Code do not apply to any amount required to be distributed under section 408(a)(6) of the Code.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) ("Rev. Proc. 2003-16") provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer A asserts that the failure to roll Amount 2 into IRA Y within the 60-day rollover period prescribed by section 408(d)(3) of the Code was due to financial institution error. Taxpayer A does not dispute the designation of Trust C as the proper beneficiary of IRA X. However, Taxpayer A alleges that the Trust C trustees and the trustees' attorney failed to fulfill duties to her under state law when they allowed the distribution of Amount 1 from IRA X on Date 4, and when the trustees' attorney failed to timely inform the trustees and custodian of assumed rollover options for Taxpayer A, a surviving spouse. The information you presented and documentation you submitted are insufficient evidence of financial institution error. Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA X.

Thus, the contribution of Amount 2 to IRA Y and the subsequent transfer to IRA Z will not be considered valid rollover contributions.

No opinion is expressed as to the tax treatment of the transactions described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

If you wish to inquire about this ruling, please contact XXXXXXXXXX
XXXXX (ID XXXXXXXXX) at (XXX) XXXXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: XXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXXXX